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REPORT
98–546

AUTHORIZING APPROPRIATIONS TO THE NUCLEAR REGULATORY COMMISSION

JUNE 29 (legislative day, JUNE 25), 1984.—Ordered to be printed

Mr. SIMPSON, from the Committee on Environment and Public Works, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany S. 2846]

The Committee on Environment and Public Works, reports an original bill (S. 2846) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974 and recommends that the bill do pass.

GENERAL STATEMENT

The bill, as reported, authorizes $466,800,000 for salaries and expenses of the Nuclear Regulatory Commission (NRC) for fiscal year 1984, the amount requested by the Commission. The authorization represents a decrease of $7.7 million from the amount appropriated to the Commission for fiscal year 1983. The Committee's recommendation includes funding for the equivalent of 3,371 permanent staff positions.

The bill also authorizes $460,000,000 for salaries and expenses for the agency for fiscal year 1985. This amount, which is the amount requested by the Nuclear Regulatory Commission in its budget request in January of 1983 [1] includes funding for 3,325 staff positions.

TWO-YEAR AUTHORIZATION

SUMMARY

This bill provides for a two-year authorization for fiscal years 1984 and 1985.

[1] Budget Estimates, fiscal years 1984/85, NUREG–0953.

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DISCUSSION

In its submittals, the NRC has provided the Committee with detailed budget proposals and a comprehensive justification for both fiscal years 1984 and 1985. Accordingly, this bill authorizes funding for both fiscal years.

The Committee notes that the fiscal year 1985 budget request submitted by the Commission in January of 1983 ("Budget Estimates, Fiscal Year 1984/85," NUREG–0953) was modified in a number of significant respects in the request submitted in January of 1964 ("Budget Estimates, Fiscal Year 1985," NUREG–1040).

The Committee is aware of the significant additional responsibilities imposed on the Commission between January 1983 and January of 1984, and is sympathetic to the need for flexibility on the part of the Commission to meet these new requirements. The Nuclear Waste Policy Act of 1982 (Public Law 97–425), for example, includes a number of new requirements, the budegtary impact of which the Commission was simply unable to examine thoroughly prior to January 1983, when the Commission submitted its request for fiscal year 1985. Other programs, such as the offices of Nuclear Regulatory Research and Inspection and Enforcement, reflect significantly altered funding levels from those requested in January of 1983, responding, in part, to events that transpired since January of 1983.

The Committee notes that the original justification for proceeding with a two-year authorization process for the Commission is premised on the Commission's ability to provide the Committee with a comprehensive budget justification for both years covered by the two-year authorization cycle. In the absence of such comprehensive and detailed budgetary information, or in the event of significant changes in the Commission's budget request from year to year, the Committee's ability to authorize the agency's activities on a two year cycle is correspondingly limited. Accordingly, the Committee urges the Commission, in its fiscal year 1986–87 request, to be submitted in January of 1985, to provide this Committee with a comprehensive and detailed justification for both fiscal years. In addition, in order to enable this Committee to carry out its responsibilities, the Committee requests the Commission to submit all communications between the Commission and the Office of Management and Budget on the Commission's fiscal year 1986–87 budget request, at the time that such request is submitted to Congress.

Discussion of Intent

NUCLEAR REACTOR REGULATION (SECTION 102(a)(1))

Summary

The bill includes an authorization of $91,490,000 for fiscal year 1984 andl $87,140,000 for fiscal year 1985 for the activities of the Office of Nuclear Reactor Regulation, which are identical to the Commission's requests.

Discussion

The Commission requested an authorization of $91,490,000 for fiscal year 1984, which is a decrease of $2,890,000 in NRC's fiscal year 1983 estimate. The request provides for 730 positions, which is a decrease of

18 positions from NRC's fiscal year 1983 estimate. NRC's fiscal year 1985 request reflects a decrease of $4,350,000 and 21 positions in the fiscal year 1984 request.

The Committee, in approving an authorization of $91,490,000 for fiscal year 1984 and $87,140,000 for fiscal year 1985, is not recommending any changes to the proposed program at this time.

The Office of Nuclear Reactor Regulation's (NRR) primary objective is to ensure that the design, siting, construction, and operation of nuclear reactors adequately protect the public health and safety and the environment.

To achieve this objective, the budget request for NRR includes programs for:

1. Completion of operating reactor licensing actions;
2. Expeditious review of applications for operating licenses;
3. Timely resolution of unresolved safety issues and generic safety issues, including human factors issues; and
4. Examinations to qualify and requalify reactor operators.

Within this request, NRR also intends to continue to place special emphasis on the regulatory activities necessary for the decontamination of Three Mile Island Unit No. 2, defueling the reactor, and disposition of the radioactive waste. Finally, the Commission's request includes funds for an Integrated Safety Assessment Program (ISAP).

a. Operating reactors.—The Committee intends that the regulatory activities associated with operating power reactors that are necessary to protect the public health and safety should continue to be NRR's first priority. To ensure that operating facilities achieve and maintain adequate levels of protection of public health and safety and the environment, funds authorized in this bill for the fiscal years 1984 and 1985 should permit NRR to take the necessary actions to correct identified inadequacies in plant design and operation, and to review and act promptly upon licensees' requests for amendments to operating licenses.

The Committee notes with approval the Commission's efforts in fiscal years 1981 and 1982 to minimize and eliminate licensing delays for nuclear powerplants scheduled to be completed in fiscal year 1983 and beyond. The Committee reiterates its interest in seeing that the Commission pursues appropriate administrative remedies to ensure that such delays are minimized and eliminated.

b. Systematic safety evaluation of operating reactors.—Resources are also provided to pursue the Integrated Safety Assessment Program (ISAP), following Commission and congressional review of the results of Safety Evaluation Plan Phase II and subsequent Commission approval of the ISAP Program Plan. According to testimony provided by the Commission, the objective of ISAP is to provide a comprehensive review of selected operating reactors to address all pertinent safety issues and to provide an integrated, cost-effective implementation plan based upon both deterministic and probabilistic evaluation techniques. This program will provide the technical basis to resolve outstanding licensing actions, establish overall plant improvement schedules, and serve as a benchmark from which future regulatory actions can be judged on a plant-specific basis. This pro-

gram will also address outstanding TMI Action Plan requirements, and the implementation of generic issues and unresolved safety issues.

c. Operator licensing.—The Commission has requested funding for operator licensing, in order to administer written, oral, and simulator examinations at reactors having plant-specific simulators and a written exam and an expanded oral exam at reactors without plant-specific simulators. The Commission advised the Committee that in fiscal year 1985, NRR is planning to increase the number of examinations performed with in-house staff in order to improve consistency and control over the examination process, an objective that this Committee supports. This should result in decreases in the funds required for this program and a corresponding increase in in-house staff.

d. Casework.—The Commission' request for NRR's casework program includes those efforts associated with the safety, environmental, and antitrust reviews, including the public hearing process, for applications for construction permits (CP), operating licenses (OL), and standard plant design approvals, as well as topical report reviews.

The funding authorized by the Committee for fiscal years 1984 and 1985 should enable NRR to continue to review license applications to ensure that safety and environmental reviews are conducted in a manner that adequately protects the public health and safety and the environment, and to schedule reviews in a fashion that will ensure that the review process will not unnecessarily delay the reactor fuel load and startup testing.

e. Safety technology.—The NRC's Safety Technology program is directed at enabling the NRC to develop independent positions on significant issues that relate to the safety of reactor design, construction and operation. This program also includes an integrated program to develop, review, and maintain licensing and regulatory requirements.

The Commission has advised the Committee that, in fiscal year 1983, three unresolved safety issues were addressed and resolved. Resources have been requested to develop solutions for the ten remaining unresolved safety issues currently under review. The Committee urges continued progress toward resolution of all unresolved safety issues, generic issues, and human factors issues, and has therefore included funding for this purpose.

In addition, the Commission has requested resources to develop technical resolutions for generic issues (including TMI Action Plan issues) in the areas of engineering and systems integration that have high potential for reducing the risk from nuclear powerplant operation. NRR resolved four generic safety issues in fiscal year 1983; 15 are scheduled to be resolved in fiscal year 1984; and six in fiscal year 1985.

Finally, NRR expects to resolve five of the identified Human Factors Program major issues in fiscal year 1984, and five in fiscal year 1985.

The Commission has also requested funding to develop technical positions and guidance for conducting probabilistic risk assessments (PRAs) and for improving the capability for assessing risk from external events; develop staff review criteria for audits of license-submitted PRAs; modify the PRA Procedures Guide and Audit Manual to include treatment of human error and external events; continue to

improve the Commission's capability for assessing the risk resulting from severe core damage accident sequences; and perform technical studies concerning radiological source term releases, modes, and timing of containment failures.

f. Three Mile Island Unit No. 2 cleanup.—The Commission has requested resources to provide the regulatory review, direction, and oversight necessary for the TMI–2 cleanup operations, including the technical and managerial supervision of the related NRC inspection, licensing, analysis, and government relations actions onsite, in the Middletown, Pennsylvania office and in the Washintgon, D.C. area. The Committee supports this effort and has authorized funds to enable the NRC to maintain adequate protection of the public health and safety and the environment during decontamination and disposal of radioactive waste from TMI–2.

The Commission has advised the Committee that it will continue to maintain coverage at the TMI–2 site and at headquarters, as necessary, to review and approve licensee cleanup activities, to oversee implementation of thees activities so as to ensure adequate protection of public health and safety, to verify that NRC rules and regulations are being followed, to prepare necessary environmental assessments for the various phases of the TMI–2 cleanup process, and to revise technical specifications, as needed, to ensure adequate protection of the public health and safety. Furthermore, the Commission has testified that it will conduct special evaluations of problems that arise during the course of facility decontamination and fuel removal and disposal; participate in an investigation of the TMI–2 cleanup process on decontamination technology, radioactive waste handling, and fission-product release, transport, and disposition; ensure that cleanup activities are conducted in a manner that will minimize risk to public health and safety; and assess the environmental impact of each phase of the TMI–2 cleanup effort and prepare and issue supplements to the Programmatic Environmental Impact Statement, as needed. The Committee supports these efforts, and urges the Commission to take all appropriate steps necessary to ensure that the cleanup of the TMI–2 facility proceeds safely and expeditiously.

INSPECTION AND ENFORCEMENT (SECTION 102(a)(2))

Summary

The bill includes an authorization of $70,910,000 for fiscal year 1984 and $74,770,000 for fiscal year 1985, for the activities of the Office of Inspection and Enforcement, which are identical to the Commission's requests.

Discussion

The Commission requested an authorization of $70,910,000 for fiscal year 1984 which is an increase of $1,630,000 over NRC's fiscal year 1983 estimate. The request provides for 996 positions, which is an increase of 30 positions over NRC's fiscal year 1983 allocation. The Commission's fiscal year 1985 request reflects an increase of $3,860,000 and a decrease of 6 positions in the fiscal year 1984 request.

The Committee, in approving an auhorization of $70,910,000 for fiscal year 1984, and $74,770,000 for fiscal year 1985, is not recommending any changes to the proposed program at this time.

The purpose of the Commission's Inspection and Enforcement (IE) program is to ensure that facilities and materials under NRC jurisdiction are constructed, operated, and used in a manner that protects the public health and safety and the environment, and to take prompt and vigorous enforcement action against licensees who do not comply with NRC regulations. This program consists primarily of:

(1) nuclear powerplants under construction, being tested, or in commercial operation, and non-power (test and research) reactors;

(2) fuel facilities and nuclear materials licensees; and

(3) nuclear steam system suppliers, nuclear architect/engineers, and other major nuclear system component suppliers.

The Commission's IE budget request for fiscal years 1984 and 1985 reflects a shift away from reactors under construction to reactors in operation. The Commission's request includes funding for new initiatives such as identification and inspection of selected facilities requiring more than normal inspection effort, independent design inspections for reactors under construction, and increased enforcement.

a. Reactors under construction.—The Commission's request for funds for reactors under construction includes resources for developing and implementing the reactor and vendor/contractor inspection programs; conducting construction appraisal team (CAT) inspections and independent design inspections (IDI); conducting emergency preparedness and quality assurance reviews; recommending changes in licenses and standards; and notifying licensees of generic problems at reactors under construction.

The Office of Inspection and Enforcement is responsible for the Commission's quality assurance (QA) program, which includes developing improved inspection programs, preparing QA licensing input for near term operating license applicants, and developing QA regulatory guides and standards. The Commission has advised the Committee that increasing efforts will be shifted to QA at reactors in operation.

To avoid duplication of effort and effectively utilize available NRC resources, IE is continuing to develop programs with the Institute of Nuclear Power Operations (INPO) and the American Society of Mechanical Engineers (ASME) for oversight of third-party inspections and evaluation reports. The Committee endorses such efforts and urges the Commission to take advantage of the expertise of these organizations.

b. Reactors in operation.—The Commission's budget request includes funding for IE's program for reactors in operation. This program consists of both scheduled and unscheduled reactive inspections. The Commission has advised the Committee that it will continue to place emphasis on direct observation of plant operations at each nuclear reactor unit, primarily through the resident inspector program. The Committee endorses the Commission's recent efforts, based upon recently identified inadequacies in licensee QA programs, to devote additional effort to reviewing licensee QA and maintenance programs, as well as increased inspection of vendor/contractor QA programs.

Staffing increases in fiscal year 1985 will provide for the increased operating reactor workload. Funding increases in fiscal year 1985 will provide for technical inspection support at selected facilities requiring more than normal inspection effort, inspection support during outages, inspection support for QA inspections, and technical support for observation and evaluation of emergency preparedness exercises.

c. Fuel facilities, safeguards, materials, and waste management.—The Commission's budget request for its Fuel Facilities, Safeguards, Materials, and Waste Management program includes funding for developing and implementing the Commission's radiological safety and safeguards inspection program for fuel facilities, materials licensees, nuclear waste management, and transportation of radioactive material.

Within this program, the Commission will develop inspection policies and strategies for NRC inspections in response to the Nuclear Waste Policy Act (NWPA) of 1982. The inspection of dry cask storage of spent reactor fuel will commence in fiscal year 1985.

d. Enforcement, technical support, and incident response.—The goal of the NRC's Enforcement Program is to ensure licensee compliance with all NRC regulations. Notices of violation, civil penalties and orders are issued, as appropriate, to ensure compliance.

This bill includes funding for conducting systematic assessments of licensee performance (SALP), a comprehensive, periodic appraisal by the NRC staff of power reactor licensees. These assessments are designed to improve licensee performance, and to improve the NRC regulatory performance by determining those areas in which increased inspection emphasis is needed.

NUCLEAR MATERIAL SAFETY AND SAFEGUARDS (SECTION 102(a)(3))

Summary

The bill includes an authorization of $36,280,000 for fiscal year 1984 and $35,710,000 for fiscal year 1985, for the activities of the Office of Nuclear Material Safety and Safeguards, which are identical to the Commission's requests.

Discussion

The Commission requested an authorization of $36,280,000 for fiscal year 1984, which is an increase of $630,000 over NRC's fiscal year 1983 estimate. The request provides for 306 positions, which is a decrease of 8 positions in the fiscal year 1983 position allocation. The Commission's fiscal year 1985 request reflects a decrease of $570,000 and 2 positions in the fiscal year 1984 request.

The Committee, in approving an authorization of $36,280,000 for fiscal year 1984, and $35,710,000 for fiscal year 1985, is not recommending any changes to the proposed program at this time.

The primary objective of the Office of Nuclear Material Safety and Safeguards (NMSS) is to ensure adequate protection of the public health and safety and the environment in the design, siting, construction, and operation of nuclear fuel cycle facilities, including nuclear waste storage and disposal facilities, and in the use and transportation of nuclear materials. NMSS is responsible for performing the safety, environmental, and safeguards reviews of applications for fuel cycle

facility licenses, and the amendment and renewal of such licenses. NMSS is also responsible for licensing the use of nuclear materials and for regulating the design of containers used for transporting nuclear materials. In addition, NMSS is responsible for conducting reviews of the safeguards plans for power and non-power reactors.

The Commission has advised the Committee that the Nuclear Waste Policy Act of 1982 (NWPA) has significantly increased the NMSS resource requirements during fiscal years 1984 and 1985.

a. Fuel cycle facility and nuclear material safety program.—The Commission has requested funding for the Fuel Cycle Facility Safety program to provide for the licensing and regulation of uranium fuel fabrication facilities, advanced fuel research and development facilities, uranium hexafluoride production facilities, storage of fresh fuel at reactors, storage of low-level waste at reactors, interim "out of reactor pool" storage of spent fuel at reactor sites, and independent spent fuel storage facilities. The Fuel Cycle Facility Safety Program also includes the remedial action program for formerly-licensed sites at which residual radioactive contamination is identified and controlled. In addition, this office is responsible for oversight of the Department of Energy demonstration project at West Valley, New York, under the provisions of the West Valley Demonstration Project Act.

The resources authorized for Transportation Safety will enable the Commission to proceed with its safety review and certification of containers proposed for transportation of nuclear materials. These funds will also provide for the certification of dry spent fuel storage cask designs for use as transport containers, and the assessment of safety-and-environment-related transportation issues associated with the safety requirements applicable to high-level waste and spent fuel transportation and storage container designs.

b. Waste management program.—This program represents the Commission's main focus for efforts in spent fuel storage and nuclear waste management. Under the Nuclear Waste Policy Act of 1982 (NWPA), the Commission is mandated to undertake a variety of actions on a specified statutory schedule, in coordination with the Department of Energy. Among these is the requirement for the Commission to issue a decision within three years of submission of DOE's license application for the first high-level waste repository. The NWPA identifies procedures and schedules for the development of federal plans, promulgation of regulations, and for activities leading to and through the licensing and operation of two high-level waste repositories, as well as NRC overview of DOE's activities in developing and operating a Test and Evaluation Facility. The Commission has advised the Committee that the resources requested will enable the Commission to carry out its statutory responsibilities on a schedule that will not delay the Executive Branch's program in the absence of unresolved safety issues. The Committee has authorized the full amount requested by the Commission for this program, in order that the Commission can carry out its responsibilities under the NWPA in a timely manner, in accordance with the schedule established in the Act. The Committee further requests the Commission to keep this Committee fully and currently informed, through periodic reports, of its progress in implementing the NWPA. Where statutory deadlines are not met, the Committee requests the Commission to transmit an explanation of the reasons for such delay.

NUCLEAR REGULATORY RESEARCH (SECTION 102(a)(4))

Summary

The bill includes an authorization of $199,740,000 for fiscal year 1984 and $193,290,000 for fiscal year 1985 for the activities of the Office of Nuclear Regulatory Research, which are identical to the Commission's requests.

Discussion

The Commission requested an authorization of $199,740,000 for fiscal year 1984, which is a decrease of $9,760,000 in NRC's fiscal year 1983 estimate. The request provides for 250 positions, which is a decrease of 25 positions in the fiscal year 1983 estimate. The Commission's fiscal year 1985 request reflects a further reduction of $6,450,000 and five positions in the fiscal year 1984 request.

The Committee, in approving an authorization of $199,740,000 for fiscal year 1984, and $193,290,000 for fiscal year 1985, is not recommending any changes to the proposed program at this time.

The Office of Nuclear Regulatory Research has the responsibility and authority under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, to perform regulatory research in support of the nuclear regulatory process and improved reactor safety. A basic objective of the research program is to develop a sound and complete base of technical information on basic safety issues as an independently verified source of safety, health, and environmental information to be used together with information furnished by applicants or licensees as a basis for licensing and regulatory decisions. An important part of this activity is the development of safety data and analytical methods to support Commission rulemaking activities and policy determinations, and formulation of rules and regulatory requirements for Commission consideration.

There is considerable concern on the part of the Committee over the proposed cuts in funding for NRC's Office of Research, as reflected in NUREG–1040 and, at this point, the justification for such reductions is not readily apparent. In addition, the increasingly frequent practice of turning to the research budget to fund other programs or to achieve reductions in the overall funding level for the agency is of concern to the Committee because it not only threatens the solid nucleus of research talent now available to the NRC, but it also makes it extremely difficult to plan for the long-term research needs of the agency.

Accordingly, this Committee, in accordance with its earlier report to the Committee on the Budget on the Commission's fiscal year 1984–1985 budget requests, has approved the funding levels requested for the Commission's Office of Research as set forth in "Budget Estimates, Fiscal Years 1984/85", NUREG–0953.

PROGRAM TECHNICAL SUPPORT (SECTION 102(a)(5))

Summary

The bill includes an authorization of $27,520,000 for fiscal year 1984 and $27,470,000 for fiscal year 1985 for the activities related to Program Technical Support, which are identical to the Commission's requests.

Discussion

The Commission requested an authorization of $27,520,000 for fiscal year 1984, which is an increase of $470,000 over NRC's fiscal year 1983 estimate. The request provides for 367 positions, which is a decrease of 22 positions in the fiscal year 1983 allocation. The Commission's fiscal year 1985 request reflects a decrease of $50,000 and 10 positions in the fiscal year 1984 request.

The Committee, in approving an authorization of $27,520,000 for fiscal year 1984 and $27,470,000 for fiscal year 1985, is not recommending any changes to the proposed program at this time.

The Program Technical Support offices are integral to the agency's process of licensing and regulating nuclear facilities and materials for the protection of public health, safety, and environment. These programs include the Advisory Committee on Reactor Safeguards (ACRS), the Atomic Safety and Licensing Board Panel (ASLBP), the Atomic Safety and Licensing Appeal Panel (ASLAP), Investigations (OI), Executive Legal Director (ELD), International Programs (OIP), State Programs (SP), and Analysis and Evaluation of Operational Data (AEOD). These programs will continue the conduct of, and the legal representation at, hearings to license the operation of nuclear powerplants. Staffing decreases reflect the decreasing number of operating licenses to be granted each year for those PTS programs that are directly involved in the licensing process. Increases in staffing reflect greater emphasis placed on Investigations and trends-and-patterns analysis of operational experience.

PROGRAM DIRECTION AND ADMINISTRATION (SECTION 102(a)(6))

Summary

The bill includes an authorization of $40,860,000 for fiscal year 1984, and $41,620,000 for fiscal year 1985 for the activities related to Program Direction and Administration, which are equivalent to the Commission's requests.

Discussion

The Commission requested an authorization of $40,860,000 for fiscal year 1984, which is an increase of $1,450,000 over the NRC's fiscal year 1983 estimate. The request provides for 722 positions, which reflects a reduction of nine positions in the fiscal year 1983 allocation. The Commission's fiscal year 1985 request reflects an increase of $760,000 and a reduction of two positions in the fiscal year 1984 request.

The Committee, in approving an authorization of $40,860,000 for fiscal year 1984 and $41,620,000 for fiscal year 1985, is not recommending any changes to the proposed program at this time.

Program Direction and Administration (PDA) offices collectively provide overall policy direction, resource management, administration, and logistic support for the agency. The program reductions are in keeping with the Commission' efforts to minimize costs.

RESEARCH GRANTS AND COOPERATIVE AGREEMENTS WITH UNIVERSITIES (SECTION 102(b))

Subsection 102(b) of the bill authorizes the Commission to use up to one percent of the amounts authorized for the Office of Nuclear Reg-

ulatory Research for the purpose of making research grants and other research arrangements with universities.

REPROGRAMMING (SECTION 102(C))

Summary

Section 102(c) of the bill authorizes the Commission to reallocate authorized fund among programs, provided certain specified conditions are satisfied.

Discussion

This provision requires the Commission to notify the authorizing Committees of any intended action to reprogram more than $500,000 between program offices, or between specific activities within a single program office. Under this provision, the authorizing committees have thirty legislative days to review the Commission's proposed action and to comment thereon. The Commission is authorized to proceed with its proposed reallocation prior to the expiration of the 30-day period following submission to the authorizing committees of the Commission's "full and complete statement" of the proposed action to be taken, if each authorizing committee transmits to the Commission a written notification that the Committee does not object to the proposed action.

The Committee expects that the Commission will give substantial weight to written comments forwarded to it by any of the authorizing committees concerning any proposed action to reprogram amounts in excess of $500,000.

COOPERATIVE RESEARCH AND MATERIAL ACCESS AUTHORIZATION FUNDING (SECTION 103)

This section authorizes the Commission to use funds received for the cooperative nuclear safety research programs and the material access authorization program for salaries and expenses associated with those programs.

TRANSFER OF FUNDS (SECTION 104)

This section authorizes the Commission to transfer funds to other agencies of the federal government for the performance of certain activities by such agencies.

LIMITATION ON FUNDS (SECTION 105)

This section prohibits the Commission from making payments under this Act, except as provided in advance in appropriation Acts.

REGIONALIZATION OF CERTAIN COMMISSION EMPLOYEES (SECTION 106)

Summary

This section authorizes the Commission to conduct a pilot program to assess the merits of relocating certain NRC personnel to NRC's regional offices.

Discussion

Based upon testimony presented to the Committee, some concern has emerged over the direction proposed by the Commission for the

relocation of certain NRC personnel and functions to NRC's regional offices. In particular, the Committee is most concerned that the relocation of NRC personnel responsible for the licensing of nuclear powerplants may have a number of adverse consequences.

The licensing of commercial nuclear powerplants is the most important and controversial of NRC's responsibilities, and therefore deserves the attention and constant involvement of NRC's headquarters office to ensure uniformity of decisions. In addition, these personnel must be able to rely on the extensive technical expertise available through the headquarters office. Relocating these people to the various regions has prompted concern that the Commission may, as a result, diminish the nucleus of technical expertise currently available at headquarters and, at the same time, require additional resources to duplicate those skills in each of the five NRC regions.

Based upon these concerns, this provision prohibits the Commission from relocating any personnel or functions associated with commercial nuclear powerplant licensing until 60 days after the Commission submits a report to the Congress evaluating the effect of such relocation on nuclear reactor safety.

Prior to the submission of this report, the Commission may conduct a pilot program to assess the merits of relocating those personnel responsible for the licensing of nuclear powerplants to NRC's regional offices. This provision will enable the Commission to explore the merits of regionalization while, at the same time, preserving a strong headquarters presence in this area.

And finally, this provision provides that the Commission may continue to fund those personnel assigned to the field, and the activities in which they were engaged, prior to September 22, 1983. This would include activities such as operator licensing, uranium recovery licensing, certain licensing activities transferred for technical review and safety evaluation, and the limited licensing authority for the Fort St. Vrain reactor.

NUCLEAR DATA LINK (SECTION 107)

Summary

This provision authorizes the Commission to continue its efforts on the "Nuclear Data Link" system, provided certain conditions are met.

Discussion

This Committee has long supported, and continues to support, the Commission's efforts to improve its ability to communicate expeditiously and reliably with NRC regional offices, NRC on-site representatives, NRC licensees, and states in the event of an accident at a commercial nuclear powerplant.

Indeed, numerous significant shortcomings in this specific area were identified during the Three Mile Island accident by various groups who studied the TMI accident and, virtually without exception, the studies decried the poor state of communications during the accident and recommended major improvements.

Accordingly, the Congress authorized the Commission to proceed with a program—the "Nuclear Data Link" program—to address these shortcomings in the NRC's Authorization Act for fiscal years 1982 and 1983. Unfortunately, no progress has been made in addressing this

issue. As a result, the state of affairs today has not improved significantly since the time of the TMI accident over five years ago.

The Committee continues to support the Nuclear Data Link program and urges the Commission to move forward with its efforts in this area. Accordingly, this section authorizes the Commission to proceed with a prototype Nuclear Data Link program for the purpose of examining the advantages and disadvantages of various means of improving communications during an accident. In order to ensure that the Commission examines a broad range of various options, this section provides that, if the Commission proceeds with such a program, it must include as one of the alternatives considered a fully automated electronic nuclear data link.

UTILITY EMERGENCY PREPAREDNESS PLANS (SECTION 108)

Summary

This section provides that the NRC, in the absence of a state or local emergency preparedness plan approved by the Federal Emergency Management Agency (FEMA), may issue an operating license for a nuclear powerplant if it determines that there exists a state, local, or utility emergency preparedness plan which provides reasonable assurance that public health and safety is not endangered by operation of the plant.

Discussion

This provision is similar to a provision first adopted by the Congress in the NRC Authorization Act for fiscal year 1980 (Public Law 96–295, section 109) and is identical to a provision in the NRC Authorization Act for fiscal years 1982 and 1983 (Public Law 97–415, section 5), which confirm the Commission's authority to issue an operating license for a nuclear powerplant if, in the absence of a FEMA-approved state or local emergency preparedness plan, the NRC determines that there exists a state, local, or utility emergency preparedness plan which provides reasonable assurance that public health and safety will not be endangered by operation of the plant.

Virtually every report on the accident at Three Mile Island, including this Committee's report entitled "Nuclear Accident and Recovery at Three Mile Island," identified serious shortcomings in all levels—utility, local, state, and federal—charged with the responsibility for ensuring prompt and adequate response to an emergency. The Three Mile Island accident highlighted the need for greater attention to the subject of emergency preparedness. In response, the Congress adopted comprehensive legislation to address the subject of emergency preparedness at commercial nuclear powerplants (NRC Authorization Act for fiscal year 1980, Public Law 96–295, sections 106, 109, and 304).

In accordance with the requirements established in Public Law 96–295, the NRC and FEMA initiated a joint effort to establish and implement a comprehensive regulatory program for the preparation, submission, review, and evaluation of emergency preparedness plans. Extensive regulatory criteria were established, setting forth the requirements for emergency preparedness plans. Furthermore, detailed procedures were put in place at both FEMA and the NRC, to govern the process by which FEMA and the NRC would accept, evaluate, and approve such plans.

In April of 1981, the Subcommittee on Nuclear Regulation convened a hearing to review the progress being made by NRC and FEMA in their efforts to implement this important regulatory initiative. The Subcommittee was pleased to learn that much progress had, in fact, been made, but urged both the NRC and FEMA to redouble their efforts to ensure continued progress in their review and approval of emergency preparedness plans. In April of 1983, the Subcommittee revisited this issue. Again, the Subcommittee heard from both the NRC and FEMA. In addition, various representatives of state and local governments, intervenor groups, and the industry testified before the Subcommittee. The NRC and FEMA reported significant progress in addressing many of the concerns that were identified at the earlier hearing.

The Committee believes that this process has, by and large, functioned very effectively. State and local emergency preparedness plans have been developed and exercised at least twice for all operating plants. Of the 55 sites with operating nuclear powerplants, 24 have now received final Federal approval for their emergency preparedness plans. For the remaining sites, FEMA is working closely with state and local governments in an effort to complete the necessary steps for approval of such plans. In some instances, these plans will require additional work. In other instances, however, the Committee has been advised that plans have been prepared, exercised, and submitted and are awaiting the formal FEMA evaluation.

In the course of the Subcommittee's hearings, however, two potentially significant problems have been raised. First, witnesses expressed concern that under the existing process, state or local governments, by acting or failing to act, could keep FEMA and the NRC from evaluating an emergency preparedness plan for a nuclear powerplant that was prepared or submitted, or both, by the applicant or licensee, and, as a result, prevent the NRC from issuing an operating license to such applicant or licensee if the NRC determines that the plan submitted by the applicant or licensee provides reasonable assurance that public health and safety is not endangered by operation of the plant.

The Committee reiterates that the adoption of this provision is intended to reconfirm the authority of the NRC and FEMA to evaluate an emergency preparedness plan submitted by an applicant or licensee pursuant to this section.

In 1980, the Conference Report on the fiscal year 1980 NRC Authorization Act (Public Law 96–295) stated that:

> [T]he conferees sought to avoid penalizing an applicant for an operating license if a State or locality does not submit an emergency response plan to the NRC for review or if the submitted plan does not satisfy all the guidelines or rules, the compromise permits NRC to issue an operating license if it determines that a State, local, or utility plan, such as the emergency preparedness plan submitted by the applicant, provides reasonable assurance that the public health and safety is not endangered by operation of the facility. (H. Rpt. 96–1070, p. 27)

Under section 108 of this bill, the Committee expects the NRC and FEMA to undertake a review of all emergency preparedness plans

submitted for evaluation, regardless of whether the plans have been prepared or submitted, or both, by a governmental entity or by the applicant or licensee for such facility. If a state or locality does not submit an emergency response plan for review, or in the absence of a state or local emergency preparedness plan which has been approved by FEMA, this provision provides that the NRC still may issue an operating license if it determines that a plan prepared or submitted, or both, by an applicant or licensee provides reasonable assurance that public health and safety is not endangered by operation of the facility.

The second concern was raised in the testimony of various utility representatives and in FEMA's quarterly report to the Subcommittee on Nuclear Regulation on emergency planning. The Subcommittee has received evidence that some utilities are being asked to make financial commitments to state and local governments, or to agree to undertake certain actions requested by state and local governments, in exchange for state or local participation in the development and implementation of emergency preparedness plans.

The Committee emphasizes that the process established by NRC and FEMA for the preparation, submission, evaluation, and approval of emergency preparedness plans is not intended, and should not be used, for the purpose of achieving objectives, obtaining agreements, or exacting concessions on matters not reasonably related to emergency planning. Accordingly, the Committee will continue to focus careful attention on this matter and, if necessary, consider further action to address those instances where the action being requested or the financial assistance being sought is not reasonably related to the preparation and implementation of an emergency preparedness plan prepared in accordance with the requirements established by NRC and FEMA.

OWNERSHIP OF NRC-LICENSED FACILITIES (SECTION 109)

Summary

This section would authorize the Commission to transfer a facility license from a U.S. corporation to a U.S. subsidiary of a foreign corporation, provided certain conditions are satisfied.

Discussion

This section would authorize the Commission to transfer Facility License No. R–81 for the Sterling Forest research reactor from Union Carbide, a U.S. corporation, to Cintichem, a U.S. subsidiary of Hoffman-LaRoche, a foreign corporation.

On May 12, 1983, the NRC received a draft application for the retransfer of Facility Operating License No. R–81, for the Sterling Forest research reactor, submitted on behalf of Union Carbide Subsidiary "B", Inc. and Cintichem, Inc.

In a decision rendered in June of 1983, the Commission concluded that, even though Cintichem is a U.S. corporation owned by another U.S. corporation, the ultimate owner of Cintichem, Hoffman-LaRoche, is a foreign corporation, and that under existing law the NRC is precluded from transferring licenses to foreign corporations. Specifically, the Commission concluded that sections 103d. and 104d. of the Atomic Energy Act of 1954, as amended, prohibit the Commission from ap-

proving the proposed transfer. Accordingly, the Commission denied the request for a transfer of the license.

The Committee has been advised that the Sterling Forest research reactor is rated at five megawatts and is employed for the fabrication of radiopharmaceutical products used by the medical industry. A major product of the reactor is molybdenum-99. Sterling Forest accounts for 50 percent of the molybdenum-99 medical requirements in the United States, Japan, and western Europe. A reactor near Ottawa, Canada, operated by Atomic Energy Canada, Ltd., is the only other North American facility producing fission product molybdenum-99. Furthermore, the Committee has been advised that the Sterling Forest nuclear reactor is the only privately-owned nuclear reactor in the world producing commercial quantities of radioisotopes for medical diagnosis and other research purposes. All other reactors producing isotopes in commercial quantities are owned and operated outside of the United States by foreign government agencies. The Committee has also been informed that the Sterling Forest reactor will, in all likelihood, be decommissioned if the proposed license transfer does not take place.

The Commission has advised the Committee that it would not oppose additional statutory flexibility to address cases such as this one, so long as the Commission retains the authority to prevent the issuance of any license which, in the opinion of the Commission, would be inimical to the common defense and securitiy or the health and safety of the public.

The Committee has concluded that it would not be in the best interest of the United States to interrupt the only major domestic source of the isotopes produced by this reactor. Furthermore, the Committee has examined this requested license transfer, and notes that the facility involved produces only miniscule amounts of weapons grade plutonium; that a reprocessing facility would be needed before that plutonium could be separated; and that Cintichem has proposed to the Commission various license conditions that could prevent any effective foreign domination or control of the special nuclear material at the facility.

For these reasons, the Committee has agreed to authorize the Commission to consider this proposed license transfer. This provision would authorize the Commission to approve this license transfer if it determines that: (i) the transfer would not be inimical to the common defense and security or to the health and safety of the public; and (ii) such conditions as may be appropriate are included in the license to ensure that no foreign corporation can direct the actions of Cintichem in any way that would be inimical to the common defense and security or to the health and safety of the public.

NUCLEAR WASTE (SECTION 201)

Section 201 provides that the provisions in sections 115, 116, 117 and 118 of the Nuclear Waste Policy Act of 1982 constitute the exclusive rights of participation by an affected state or Indian tribe for the specified facilities, with the exception that an affected state or Indian tribe may continue to exercise any recognized right under existing law (*i.e.*, any law in existence as of the date of passage of the Nuclear Waste Policy Act of 1982) regarding these facilities.

HIGH TEMPERATURE GAS-COOLED REACTOR (HTGR) RESEARCH AND PREAPPLICATION REVIEW

Summary

The bill authorizes $2,600,000 each fiscal year for acceleration of efforts in High Temperature Gas-Cooled Reactor (HTGR) research. The bill also authorizes $1,000,000 in each fiscal year to accelerate efforts in gas-cooled thermal reactor preapplication review.

Discussion

The Committee received testimony that HTGR technology may have some advantages over light-water cooled reactor technology. These advantages include their availability in localities where cooling water sources are limited, and their production of high-temperature steam for industrial applications. The testimony also indicated that HTGR technology may have safety advantages over light-water reactors, particularly in the available response time during loss-of-coolant accident situations.

The additional funding provided for this purpose should allow the Commission's regulatory program to keep pace with industry and government programs for the development of a large-scale HTGR plant.

License Fees

At a hearing conducted on March 10, 1983, the Committee expressed concern about the effects of the Commission's proposed increases in the license fees for source material licenses. These increases, proposed as a part of an overall update and revision in the fee schedules for licenses granted by the Commission, would substantially increase the fees for all types of source material licenses, in some cases quadrupling the current amounts. The Committee notes that the uranium milling, processing, recovery, and refining industries are already suffering substantial economic hardship and, unlike utilities applying for reactor licenses, cannot readily pass along license fees to ratepayers. The Committee therefore urges the Commission, in updating its fee schedules for source material licenses, to reexamine the levels initially proposed by the Commission to determine if such substantial increases are in fact justified. The Committee further urges the Commission to retain, at least for source material licenses, the current practice of maintaining the concepts of fixed fees and of fees based on incurred costs, but subject to specified maximum amounts. These concepts are especially important for source material licensees, who, for the reasons noted above, need some reasonable predictability as to eventual licensing costs. Finally, the Committee notes that any changes in fee schedules should be imposed only upon applications filed after the new schedules become effective. Licensees and applicants should be able to rely on fee schedules which were in effect when applications were filed. The Commission, of course, is required by Title V of the Independent Offices Appropriations Act of 1952 to recover appropriate expenses for the processing of license applications, but the Commission can fulfill that mandate in a manner consistent with the concepts outlined here.

Hearings

The Committee and its Subcommittee on Nuclear Regulation held four hearings and heard from 26 witnesses in order to develop a public record for Committee review and action on this bill.

On February 17, 1983, the Committee on Environment and Public Works held a hearing on budget authorizations for agencies under the Committee's jurisdiction. Chairman Nunzio J. Palladino submitted for the record on that date a budget statement and overview of the NRC's budget request.

On March 10, 1983, the Subcommittee on Nuclear Regulation held a hearing on the NRC's budget request for fiscal years 1984 and 1985, as set forth in "Budget Estimates, Fiscal Year 1984/85", (NUREG–0953). A broad overview of the NRC's fiscal years 1984 and 1985 programs was presented by Chairman Nunzio J. Palladino and Commissioners Victor Gilinsky, John F. Ahearne, Thomas M. Roberts, and James K. Asselstine. Supporting testimony for the record was supplied by William J. Dircks, Executive Director for Operations; Harold R. Denton, Director, Office of Nuclear Reactor Regulation; Richard DeYoung, Director, Office of Inspection and Enforcement; John G. Davis, Director, Office of Nuclear Material Safety and Safeguards; and Robert B. Minogue, Director, Office of Nuclear Regulatory Research.

On April 15, 1983, the Subcommittee on Nuclear Regulation held a hearing on emergency planning and preparedness at commercial nuclear powerplants. Chairman Nunzio J. Palladino, accompanied by Commissioners Victor Gilinsky, John F. Ahearne, Thomas M. Roberts, and James K. Asselstine, testified on behalf of the Commission. Richard Krimm, Assistant Associate Director, Office of Natural and Technological Hazards, Federal Emergency Management Agency (FEMA), accompanied by Gary Johnson, Acting Chief, Technological Hazards Division, Spencer Perry, Office of General Counsel, and Bill Jones, Assistant Director, Office of Emergency Coordination and Support on behalf of FEMA. Also testifying were Murray R. Edelman, Chairman, Committee on Reactor Licensing and Safety, Atomic Industrial Forum, accompanied by Dr. Frederick W. Buckman, Chairman, Subcommittee on Emergency Preparedness and Siting, Atomic Industrial Forum, and George Gleason, Executive Vice President, American Nuclear Energy Council; Steven C. Sholly, Technical Research Associate, Union of Concerned Scientists, and Michael E. Faden, Legislative Counsel, Union of Concerned Scientists; Don Godard, Administrator of Siting, Department of Energy, State of Oregon; and Doran Hughes, Director, Emergency Services Office, Kenosha County, Wisconsin.

On February 23, 1984, the Subcommittee on Nuclear Regulation held a hearing on the NRC's budget request for fiscal year 1985, as set forth in "Budget Estimates, Fiscal Year 1985," (NUREG–1040). A broad overview of the NRC's fiscal year 1985 programs was presented by Chairman Nunzio J. Palladino and Commissioners Victor Gilinsky, Thomas M. Roberts, James K. Asselstine, and Frederick M. Bernthal. Supporting testimony for the record was supplied by William J. Dircks, Executive Director for Operations; Harold R. Denton, Director, Office of Nuclear Reactor Regulation; Richard C. DeYoung, Director, Office of Inspection and Enforcement; John G. Davis, Direc-

tor, Office of Nuclear Material Safety and Safeguards; and Robert B. Minogue, Director, Office of Nuclear Regulatory Research.

Cost of Legislation

Section 252.(a)(1) of the Legislative Reorganization Act of 1970 requires publication of the Committee's estimate of the costs of reported legislation, together with estimates prepared by any federal agency. The estimate for fiscal year 1984 is $466.8 million. The estimate for fiscal year 1985 is $460.0 million.

While it is contemplated that most programs will continue beyond fiscal year 1985, future funding levels depend upon decisions which have not yet been made. Following are estimates for projected NRC budget authority, based upon NRC information:

Fiscal years:	*Estimate (millions)*
1984	$466.8
1985	460.0
1986	450.0
1987	430.0
1988	430.0

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That report follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 20, 1984.

Hon. Robert T. Stafford,
Chairman, Committee on Environmental and Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner.

Congressional Budget Office Cost Estimate

1. Bill number: Not yet assigned.

2. Bill title: A bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, June 19, 1984.

4. Bill purpose: This bill authorizes the appropriation of $466.8 million and $460 million for the Nuclear Regulatory Commission (NRC) for fical years 1984 and 1985, respectively. Fiscal year 1984 appropriations to date are $465.8 million. The President has requested an appropriation of $468.2 million for fiscal year 1985.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1984	1985	1986	1987	1988
Authorization level	466.8	460.0	.....	.....	.....
Less: existing appropriations	465.8	.....	.....	.....	.....
Net additional authorization	1.0	460.0	.....	.....	.....
Estimated outlays	.....	299.7	138.3	23.0	.....

The costs of this bill fall within budget function 270.

Basis of Estimate: For the purposes of this estimate, it is assumed that this bill will be enacted by August 1984, and that the entire amounts authorized will be appropriated. The estimated annual outlays aare based on the recent spending patterns for the NRC's programs.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: In May 1983, the Congressional Budget Office prepared cost estimates for two similar bills: H.R. 2510, as ordered reported by the House Committee on Interior and Insular Affairs, and S. 1291, as ordered reported by the Senate Committee on Environment and Public Works. (These estimates were transmitted to the respective Committees on May 3, 1983 and May 13, 1983.) The amounts authorized in the three bills are identical. The estimated budget effect of this bill differs from the previous estimates because funds have been appropriated for fiscal year 1984, and because of changes in the spending patterns assumed for this agency.

9. Estimate prepared by: Kathy Gramp.

10. Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Evaluation of Regulatory Impact

In compliance with section 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The bill has no impact on personal privacy of individuals.

The bill has no effect on paperwork, except to the extent that it will facilitate efficient proceedings by the agency and thereby reduce paperwork and delay.

There is no specific economic impact of this bill, although regulatory actions taken under the basic authority of the agency do have an economic impact by applying certain requirements and standards to such businesses as nuclear power plants, fuel production facilities, and suppliers thereof.

Recordkeeping requirements are not changed from existing law.

Rollcall Votes

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During Subcommittee consideration on September 22, 1983, there were two rollcall votes. The first vote was on a motion by Senator

Mitchell to strike from the bill the provision extending the Nuclear Regulatory Commission's authority to issue temporary operating licenses. The motion was not agreed to by a vote of four nays and three yeas, as follows:

YEAS	NAYS
Baucus	Baker
Hart	Domenici
Mitchell	Simpson
	Symms

The second vote was on a motion by Senator Simpson to report the bill to the full Committee. The motion was agreed to by a vote of six yeas to one nay, as follows:

YEAS	NAYS
Baker	Hart
Baucus	
Domenici	
Mitchell	
Simpson	
Symms	

There were two rollcall votes during full Committee consideration of the bill. On November 9, 1983, Senator Mitchell offered a motion to strike from the bill the provision extending the Nuclear Regulatory Commission's authority to issue temporary operating licenses. The motion was agreed to by a vote of eight yeas to seven nays, with one member voting present, as follows:

YEAS	NAYS	PRESENT
Baucus	Abdnor	Durenberger
Chafee	Baker	
Hart	Bentsen	
Humphrey	Burdick	
Mitchell	Domenici	
Moynihan	Simpson	
Randolph	Symms	
Stafford		

On June 19, 1984, Senator Simpson offered a motion that the full Committee report the bill to the full Senate, with a recommendation that it do pass. The motion was agreed to by a vote of thirteen yeas to zero nays, as follows:

YEAS	NAYS
Abdnor	
Baucus	
Burdick	
Chafee	
Evans	
Hart	
Humphrey	
Lautenberg	
Moynihan	
Randolph	
Simpson	
Symms	
Stafford	

SUPPLEMENTAL VIEWS OF SENATOR SIMPSON

I welcome this opportunity to amplify on my understanding of the provision included in this bill on the subject of emergency preparedness at commercial nuclear powerplants (section 108).

Section 108 of this bill confirm the authority of the Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) to review and approve an emergency preparedness plan developed and submitted by an applicant for, or a licensee of, a commercial nuclear powerplant.

This provision, together with the accompanying report language, reflects an increasing concern on the part of many on this Committee, including me, that, in certain isolated instances, the process that has been established by NRC and FEMA for preparing, submitting, evalulating, and approving emergency preparedness plans is not working as it was originally intended. Accordingly, I am taking this opportunity to review the relevant legislation and legislative history on emergency preparedness—including the discussions of this very subject that were held back in 1980, when the emergency planning legislation was first adopted—in an effort to try to clear the air on precisely what Congress did and did not intend when it passed emergency planning legislation.

With the adoption of section 108, this Committee has now made it clear in three successive NRC authorization bills that it is not our intention to allow a state or locality to prevent a completed facility from operating by refusing to prepare an emergency preparedness plan. It necessarily follows that the Committee did not intend to allow such governmental entities to accomplish the same result by refusing to participate in the exercise or implementation of an otherwise acceptable emergency plan. To accept such a situation would be to completely frustrate this thrice-stated authority and to ignore various other existing federal emergency response responsibilities and authorities that will, if exercised, enable the NRC and FEMA to avoid such an unfortunate and unintended result.

This Committee did not legislate the nuclear emergency response provisions in a vacuum. We passed emergency planning legislation back in 1980 with full recognition of the various existing federal and state emergency planning responsibilities and authorities. It is abundantly clear, for example, that the Governor of a state, as well as other state and local authorities, are under an obligation to act to protect the public health and safety in the event of an actual emergency. No public official to date has stated that he would not fulfill this legal duty and I would be quite surprised if such a claim were to be made in the future.

We also recognized, among other things, that the federal government has extensive authority to render assistance in time of public emergency, including such authorities as those set forth in the NRC Authorization Act for fiscal year 1980 (Public Law 96–295), the Civil

Defense Act of 1950, the Disaster Relief Act, and the delegations of authority from the President contained in Reorganization Plan No. 3 of 1978 and other related Executive Orders. In adopting emergency preparedness legislation, we did not, in my judgment, in any way intend to limit these existing authorities, or their application to radiological emergencies at commercial nuclear powerplants.

In fact, quite to the contrary, the NRC Authorization Act for fiscal year 1980 provided for a substantial expansion of the federal government's emergency response authorities. Section 109 of the Act, for example, established a pervasive and preemptive federal role for the review and approval of off-site emergency response plans for commercial nuclear powerplants. In addition, section 304 mandated establishment of a National Contingency Plan:

> [t]o provide for expeditious, efficient, and coordinated action by appropriate Federal agencies to protect the public health and safety in the case of accidents at any utilization facility licensed under section 103 or 104b. of the Atomic Energy Act of 1954.

Indeed, section 304 is of particular interest and significance since the Congress specifically directed that the National Contingency Plan should provide for carrying out the following responsibilities:

> [D]esignation of an interagency task force with FEMA as lead agency, and *consisting of personnel who are trained, prepared, and available to provide necessary services to carry out the plan;* assignment of duties and responsibilities among Federal departments and agencies; identification of an official of the lead agency as task force coordinator at the facility site; *establishment of a national center to provide coordination and direction in Plan implementation;* and identification, procurement, maintenace and storage of equipment and supplies. (H. Rept. 96–1070, p. 37, emphasis added.)

In fact, by directing that the responses provided for under the National Contingency Plan should be triggered upon NRC's determination that a possible or actual accident is occurring which requires activation of the Commission's own emergency procedures, Congress has thereby evinced a clear intent that the federal government should be directly involved in the emergency response to radiological emergencies at the very earliest stage of the emergency.

Based upon these and other provisions, I remain confident that existing statutory and administrative authority is sufficient to enable NRC and FEMA to ensure that an off-site emergency response plan, prepared and submitted by a utility, can be approved and subsequently exercised and implemented in a fashion that will meet the standard established under section 108. It is clear that under the NRC Authorization Act for fiscal year 1980, as well as under the Civil Defense Act of 1950, sufficient authority exists for the Federal Government to

exercise a plan prepared and submitted by a utility, and to implement such a plan in the event of an actual emergency.[1]

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[1] A memorandum dated May 4, 1984, from the Congressional Research Service (CRS) on this subject addresses the issue of whether either FEMA or DOE has authority under existing law to conduct "command and control" activities in the event of a civilian nuclear powerplant emergency. The memorandum answers the question in the negative, finding no "clear authority" for such function. That is, of course, the correct answer to the narrow "specific" authority issue that CRS was asked to address. The relevant law, the Federal Civil Defense Act of 1950, was enacted long before the Congress legislated on the specific issue of nuclear powerplant emergencies and for that reason such emergencies would not have been specifically addressed. The Civil Defense Act does, however, set out a pervasive federal emergency response scheme that is broad enough to encompass radiological emergencies, along with other man-made and natural disasters.

In characterizing the Civil Defense Act as providing only "equivocal authority" for federal assumption of command and control functions, the CRS analysis relies upon a facile refutation of the proposition that statutory authority to *"direct"* civil defense plans and programs can support an active federal command and control function. The memorandum does not articulate the reasoning underlying its conclusion that "[t]he better argument" is that only *administrative* "direction," not active participation, is covered by this particular statutory provision. This argument, in any event ignores the stronger grant of authority to *"sponsor"* civil defense plans that appears in the same provision. Sponsorship alone can reasonably be interpreted to encompass active participation in emergency plan implementation, and when taken together with the authority to "direct", leaves little doubt of the wide scope of federal authority.

The CRS analysis also ignores the Civil Defense Act's express grant of statutory authority to "delegate . . . to the several departments and agencies of the Federal Government appropriate civil defense responsibilities" and to "review and coordinate the civil defense activities of the departments and agencies with each other and with the activities of the States . . ." (50 U.S.C. App. Section 2281(b)). Coordination of activities is, itself, an active function—one which can readily include the assumption of "command and control" duties.

The provisions of the Civil Defense Act and Executive Order 12148 may not contain a narrow, *explicit* authorization for FEMA to direct participation of agency personnel in command-and-control linked to a commercial nuclear powerplant emergency. They do, however, provide a basis for direct federal participation that is sufficiently well founded to support a FEMA exercise of a plan dependent, in part, upon federal provision of command and control, and, in the overall context of authority, for a broad federal role to plan, test and implement emergency plans if other governmental entities fail in their legal obligations to protect the public health and safety.

In addition to the foregoing, I also want to take this opportunity to clarify a number of points regarding the utility plan option over which considerable confusion has arisen in recent months.

First, this provision was originally adopted in response to Congressional concern over *two potential problems*: (1) the case where a state or locality submits a plan, but that plan does not satisfy all the guidelines or rules; and (2) the case where a state or locality does not submit a plan *at all*.

It is this latter point that has often been overlooked or misconstrued in the debate over the utility plan option and which, accordingly, the Committee has reaffirmed in this report, in once again endorsing the utility plan option. In particular, it is worth noting that we have reaffirmed the same basic rationale that was stated back in 1980, when the utility plan option was first adopted: "The conferees sought to avoid *penalizing* an applicant for an operating license if a State or locality does not submit an emergency response plan to the NRC for review . . ." (H. Rpt. 96–1070, p. 27, emphasis added), by permitting the NRC to issue an operating license based upon a plan prepared by the utility applicant.

This specific point is particularly evident from the context of the discussions among the various Conferees when this provision was adopted in 1980. It is apparent from the discussion that follows that the Conferees approved the "utility plan" option because of a concern over the potential for outright refusal of a state or local government to submit a plan:

> Representative SYMMS. [sic] Will the Senator yield on one question? Let's say, for example, that *the state doesn't cooperate*, but the licensee is out there doing everything right along with the state, so this amendment would be a roadblock which would hinder going ahead with a plan that may have many millions of dollars at stake, isn't it possible?
>
> Senator HART. I think it is possible, but not probable in the sense consumers are also voting, and if a Governor and voting staff is not taking even minimal steps to prepare for for the startup of the new nuclear power plant designed to provide energy for that area, I think the people know how to get those results.
>
> We believe, all the people talk about best governments closer to the people, I think the people know where their state capitals are and how to get ahold of their state government and let them know they are not happy.
>
> Representative UDALL. Mr. Weaver?
>
> Representative WEAVER. Thank you, Mr. Chairman. First, I just want to commend Senator Hart and his colleague, Senator Simpson, for the excellent work, and I think a very fine compromise. I think it does draw a fine balance between the House and Senate versions, and protects the public health and safety in the most reasonable way. I certainly support the compromise.
>
> Representative VENTO. One of the points there, since this overall state responsibility, is there any possibility that we can include report language, if it were adopted that would

permit the NRC or FEMA to work directly with the utilities? We can make clear *if an individual utility is being frustrated by that, that the NRC, in the absence of state action, could act to approve a plan, and thereby avoid this particular problem that has been discussed.* I don't know what the disposition of this is going to be. It seems to me if we do anything on that basis, it would seem to be the reasonably (sic) way to go so we don't have that impediment.

Senator HART. It is not disagreeable. I think it would be put in an area where it hasn't been before; namely, emergency preparedness, civil defense. (Transcript, Joint Conference on the Nuclear Regulatory Commission, February 21, 1980, pp. 16–18, emphasis added.)

As this discussion clearly indicates, the Conferees did, in fact, contemplate a situation where the utility may end up working directly with NRC and FEMA to get an emergency preparedness plan approved.

Second, I think it is worth emphasizing that, in adopting emergency planning legislation, this Committee has endeavored to ensure that states and local governments become actively involved at the earliest possible stage in both preparing and implementing emergency plans. Indeed, emergency planning has proven to be most effective in those instances where state and local governments work together closely with utilities in the development and implementation of emergency preparedness plans.

On the other hand, the extensive and important reliance on state and local governments contemplated by this approach, and their active and timely participation in the emergency planning process, was *not*, in my judgment, intended to confer upon state or local governments the authority to establish their own substantive criteria for emergency preparedness plans, to render final judgments on the adequacy of those plans when evaluated against the NRC and FEMA criteria, or to penalize applicants or licensees by refusing to submit an emergency response plan to the NRC for review.

Third, section 108 of this bill authorizes the NRC and FEMA to review, evaluate, and approve an emergency preparedness plan developed or submitted, or both, by a utility, and, based upon such approval, for the NRC to issue an operating license to the utility. As the Committee has explained in the report language accompanying this provision, section 108 *confirms* the authority that the Commission already has under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, to consider and approve utility plans. In the absence of a provision such as section 108, the Commission nevertheless has sufficient flexibility, latitude, and authority under these other Acts, and will, I trust, exercise this authority, if necessary, to evaluate and approve an emergency preparedness plan submitted by a utility, and to issue an operating license based upon such a plan.

Fourth, the Committee has made it clear that FEMA and NRC can consider and approve utility-submitted emergency preparedness plans *both* for plants under construction, for which an applicant is seeking an operating license from the NRC, as well as for plants already in

operation, for which, for whatever reason, the licensee of such plant elects to prepare and submit an emergency preparedness plan.

Finally, I should like to emphasize that I do not construe the Committee's action in adopting section 108 to affect in any way NRC's or FEMA's existing emergency planning regulations, or the substantial administrative flexibility that the Commission has to modify those regulations in any respect, should it deem such action appropriate. The NRC may, for example, continue its practice of issuing operating licenses, limited to 5 percent of full power, prior to the submission or approval of offsite emergency preparedness plans.

Likewise, the Commission may continue to exercise the discretion currently available under these existing rules. Nothing in this provision is intended to limit, modify, or affect that flexibility. The NRC's emergency planning rule provides generally, for example, that utilities can operate nuclear power plans above 5 percent of rated power only when there is an adequate emergency plan for the plant (*i.e.*, when the emergency preparedness plan conforms to the enumerated standards for emergency planning set forth in the rule). Certain exceptions to this overall requirement are, however, provided in the Commission's regulations. In particular, the Commission's rules provide that, if there are deficiencies in a plan, an operating license for the plant may still be issued by the Commission if: (a) the deficiencies are not significant, (b) adequate interim compensating actions will be taken, or (c) there are other compelling reasons to permit plant operation. These exceptions have been an integral part of the rule since it was first promulgated in 1980. The Committee's language in section 108 of the bill, and the language of earlier statutes on which it is based, should not be read as affecting these exceptions in any way. It was not our intent to require more than what the existing rules require in terms of acceptable levels of preparedness, or to override the substantial flexibility that the Commission has had available to it over the last four years in evaluating and approving emergency preparedness plans.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follow: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.)

* * * * * * *

Sec. 126. The provisions of sections 115, 116, 117, and 118 of this subtitle shall constitute the exclusive rights of participation by an affected State or Indian tribe in the planning, siting, development, construction, and operation of a repository or a monitored, retrievable storage facility that is required to be licensed by the Commission: Provided, however, That nothing in this Act shall preclude any recognized right of any State or Indian tribe under existing law with respect to such repository or monitored, retrievable storage facility.

○